

**AN ORDINANCE
BY CITY UTILITIES COMMITTEE**

08- 0 -2284

AN ORDINANCE TO AUTHORIZE THE MAYOR OR HER DESIGNEE TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE UNITED STATES OF AMERICA, BY AND THROUGH THE ADMINISTRATOR OF THE GENERAL SERVICES ADMINISTRATION TO ALLOW THE INSTALLATION OF A SECURE TUNNEL TO SERVE AS A UTILITY, SERVICE, AND PEDESTRIAN CORRIDOR THAT WILL RUN UNDERNEATH THE PUBLIC RIGHT-OF-WAY OF FAIRLIE STREET BETWEEN WALTON STREET AND POPLAR STREET IN DOWNTOWN ATLANTA AND WILL CONNECT THE ELBERT P. TUTTLE U. S. COURT OF APPEALS BUILDING AND THE ELBERT P. TUTTLE U. S. COURT OF APPEALS ANNEX BUILDING SO LONG AS THE 11TH CIRCUIT COURT OF APPEALS OCCUPIES AND USES THE STRUCTURES; TO WAIVE CERTAIN PROVISIONS OF SECTION 138-25 OF THE CITY OF ATLANTA CODE OF ORDINANCES; AND FOR OTHER PURPOSES.

WHEREAS, the United States of America, acting by and through the Administrator of General Services ("GSA"), has plans to improve and expand the present Elbert P. Tuttle United States Court of Appeals Building ("Tuttle Building") located at 56 Forsyth Street, and has purchased two properties abutting the western side of Fairlie Street that will be used as a new Tuttle Building Annex Building ("Annex Building"), directly across from the Tuttle Building; and

WHEREAS, as part of its Tuttle Building Annex Security Project, the GSA desires to improve security and access between the Tuttle Building and the planned Annex Building, consisting of the installation of a utility, service, and pedestrian tunnel (the "Project") that will encroach into the public right-of-way and run under Fairlie Street between Walton Street and Poplar Street more fully described and shown on Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, GSA and the City of Atlanta ("City") desire to enter into an agreement for the construction, installation, maintenance, repair and replacement of the Project into the public right-of-way; and

WHEREAS, an Intergovernmental Agreement ("Agreement") between the City and GSA provides a superior method to accomplish the tasks identified above because of certain timing and security issues which are presented by the use of a standard encroachment agreement; and

WHEREAS, this Agreement shall continue to be effective so long as the 11th Circuit Court of Appeals shall occupy and use the Tuttle Building and the Annex Building; and

WHEREAS, the City's Code of Ordinances, at Chapter 138, Article II, Section 138-25, requires that the Agreement be entered into between the City and the owner of the adjacent property; and

WHEREAS, Section 138-25 (3)(b) of the City's Code of Ordinances requires the payment of a monthly rental fee for the space occupied by the Project and includes other provisions which may prevent timely completion of the project ; and

WHEREAS, the General Services Administration, as the encroaching party and an executive branch agency of the United States of America, cannot commit to the payment of such a monthly rental fee, and has certain other concerns including security of the buildings and its occupants which make it appropriate for the use of an alternative arrangement; and

WHEREAS, the Commissioner of the Department of Public Works has reviewed the plans for the Project and has determined that the work will not adversely impact the ability of the affected right-of-way to handle vehicular or pedestrian traffic or otherwise to perform its intended public function.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY ORDAINS AS FOLLOWS:

Section 1: The Mayor is authorized to enter into an Intergovernmental Agreement , with the Administrator of the General Services Administration which shall replace the encroachment agreement required by Chapter 138, Article II, Section 138-25 of the City's Code of Ordinances, concerning the installation of a tunnel to serve as a utility, service, and pedestrian corridor that will run underneath the public right-of-way of Fairlie Street between Walton street and Poplar Street and will connect the Elbert P. Tuttle U. S. Court of Appeals Building and the Elbert P. Tuttle U. S. Court of Appeals Annex building. Such document shall be in a form and pursuant to conditions determined by the Commissioner of the City's Department of Public Works, the City Attorney and the General Services Administration, to be desirable, appropriate and in the best interests of the City of Atlanta and the United State of America.

Section 2: The subject of the Intergovernmental Agreement shall be limited to that encroachment necessary to construct a tunnel to provide a secure passageway for movement of Judges and Court personnel and sensitive files between the Tuttle Building and the Annex Building; to allow for the connection of utility lines between the Tuttle Building and the Annex building; moving trash and recycled waste from the Tuttle Building to the Annex Building loading dock; moving supplies and equipment for use in the Tuttle Building which are delivered to the Annex Building loading dock and such other purposes as the parties to the Agreement may find necessary to allow the tunnel to serve the needs of the Court and protect the best interests of the City with respect to future work to be done in the right of way by others in the vicinity of the tunnel.

Section 3: The use of an Intergovernmental Agreement to replace that encroachment agreement required by Sec. 138-25 of the City of Atlanta Code of Ordinances renders the

application of such section unnecessary and the waiver of said section is hereby approved.

Section 4: GSA, as the encroaching party and an executive branch agency of the United States of America, is prohibited by law from indemnifying any party. Accordingly, GSA will require any contractors who perform the work contemplated herein to indemnify and hold the city harmless from all claims arising out the construction, maintenance, or removal of the tunnel, and will maintain a policy of public liability insurance, at no expense to the City and in an amount approved by the City.

Section 5: GSA will submit or have its contractor submit plans and specifications for the tunnel project for review and approval by the Commissioner of Public Works, and will acquire or have its contractor acquire all applicable permits from the City as required by the City of Atlanta Code of Ordinances as set forth and modified herein and by the terms of the Intergovernmental Agreement and applicable federal law.

Section 6: The City Attorney is directed to prepare an Intergovernmental Agreement in accordance with such terms of Section 138, Article II, of the City's Code of Ordinances as the parties may reasonably agree to include, but pursuant to the waiver provision of this ordinance, no term which shall impede the timely completion of the project or impair the security of the Court need be included.

Section 7: The Agreement will not be binding upon the city and the City will incur no liability under it until the agreement has been approved as to form by the City Attorney, the agreement has been executed by the Mayor and attested to by the Municipal Clerk, and has been delivered to the Administrator of General Services.

Part II: Legislative White Paper: (This portion of the Legislative Request Form will be shared with City Council members and staff)

A. To be completed by Legislative Counsel:

Committee of Purview: City Utilities Committee

Caption: AN ORDINANCE TO AUTHORIZE THE MAYOR OR HER DESIGNEE TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE UNITED STATES OF AMERICA, BY AND THROUGH THE ADMINISTRATOR OF THE GENERAL SERVICES ADMINISTRATION TO ALLOW THE INSTALLATION OF A SECURE TUNNEL TO SERVE AS A UTILITY, SERVICE, AND PEDESTRIAN CORRIDOR THAT WILL RUN UNDERNEATH THE PUBLIC RIGHT-OF-WAY OF FAIRLIE STREET BETWEEN WALTON STREET AND POPLAR STREET IN DOWNTOWN ATLANTA AND WILL CONNECT THE ELBERT P. TUTTLE U. S. COURT OF APPEALS BUILDING AND THE ELBERT P. TUTTLE U. S. COURT OF APPEALS ANNEX BUILDING SO LONG AS THE 11TH CIRCUIT COURT OF APPEALS OCCUPIES AND USES THE STRUCTURES; TO WAIVE CERTAIN PROVISIONS OF SECTION 138-25 OF THE CITY OF ATLANTA CODE OF ORDINANCES; AND FOR OTHER PURPOSES.

Council Meeting Date: January 5, 2009

Requesting Dept.: Public Works

B. To be completed by the department:

1. Please provide a summary of the purpose of this legislation (Justification Statement).

The purpose of this legislation is to authorize the Mayor to enter into a Intergovernmental Agreement with the General Services Administration. The Intergovernmental Agreement will authorized the construction of a tunnel in the right-of-way under Fairlie Street between Walton Street and Poplar Street to allow for the transfer of judges, and Justice Department attorneys, and court-related documents between the U.S. Court of Appeals building, and a new U.S. Court of Appeals Annex building.

2. Please provide background information regarding this legislation.

The tunnel is needed to provide required security for court officials including judges, for the transfer of sensitive documents and materials, and to provide utility services that need to be provided to the new Court Annex facility.

3. If Applicable/Known:

- (a) **Contract Type (e.g. Professional Services, Construction Agreement, etc):**
- (b) **Source Selection:**
- (c) **Bids/Proposals Due:**
- (d) **Invitations Issued:**
- (e) **Number of Bids:**
- (f) **Proposals Received:**
- (g) **Bidders/Proponents:**
- (h) **Term of Contract:**

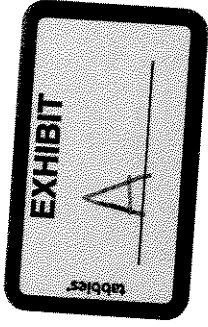
4. Fund Account Center:

5. Source of Funds:

6. Fiscal Impact:

7. Method of Cost Recovery:

This Legislative Request Form Was Prepared By: Soraya Belgrave



POPLAR ST.

96 POPLAR BUILDING
(ROBERT & CO)

57'05" D
12'05" E

1056.30' AT TOP
OF SIDEWALK

1054.28' AT TOP
OF TUNNEL

1057.03' AT TOP
OF STREET

1057.64' AT TOP
OF SIDEWALK

1054.10' AT TOP
OF TUNNEL

1052.93' AT TOP
OF TUNNEL

FAIRLIE ST.

TUTTLE
COURTHOUSE

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

ATTN: GREG PRIDGEON

Dept.'s Legislative Liaison: Soraya BelgraveContact Number: (404) 330-6002Originating Department: Public WorksCommittee(s) of Purview: City Utilities CommitteeChief of Staff Deadline: November 12, 2008Anticipated Committee Meeting Date(s): December 9, 2008Anticipated Full Council Date: January 5, 2009Legislative Counsel's Signature: Saul SchultzCommissioner Signature: [Signature]Chief Procurement Officer Signature: N/A**CAPTION**

AN ORDINANCE TO AUTHORIZE THE MAYOR OR HER DESIGNEE TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE UNITED STATES OF AMERICA, BY AND THROUGH THE ADMINISTRATOR OF THE GENERAL SERVICES ADMINISTRATION TO ALLOW THE INSTALLATION OF A SECURE TUNNEL TO SERVE AS A UTILITY, SERVICE, AND PEDESTRIAN CORRIDOR THAT WILL RUN UNDERNEATH THE PUBLIC RIGHT-OF-WAY OF FAIRLIE STREET BETWEEN WALTON STREET AND POPLAR STREET IN DOWNTOWN ATLANTA AND WILL CONNECT THE ELBERT P. TUTTLE U. S. COURT OF APPEALS BUILDING AND THE ELBERT P. TUTTLE U. S. COURT OF APPEALS ANNEX BUILDING SO LONG AS THE 11TH CIRCUIT COURT OF APPEALS OCCUPIES AND USES THE STRUCTURES; TO WAIVE CERTAIN PROVISIONS OF SECTION 138-25 OF THE CITY OF ATLANTA CODE OF ORDINANCES; AND FOR OTHER PURPOSES.

Mayor's Staff Only

Received by CPO: _____ Received by LC from CPO: _____
(date) (date)Received by Mayor's Office: [Signature] Reviewed by: Ame 11/14/08
(date) (date)

Submitted to Council: _____